

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

JASON MCGHEE, STACEY JOHNSON,  
BRUCE WARD, TERRICK NOONER,  
and DON DAVIS,

Plaintiffs,

vs.

NEBRASKA DEPARTMENT OF  
CORRECTIONAL SERVICES,

Defendant.

Case No. \_\_\_\_\_

**AFFIDAVIT OF KENTON W.  
FREEMAN, JR.**

Related: 4:17-cv-00179-KGB (E.D. Ark.)

**ORAL ARGUMENT REQUESTED**

STATE OF MASSACHUSETTS )  
COUNTY OF SUFFOLK ) ss.

I, Kenton W. Freeman, Jr., a/k/a Will Freeman, depose and state as follows:

1. I am over the age of majority, am competent to testify, and I have personal knowledge of the matters addressed in this Affidavit.

2. I am licensed to practice law in the State of Massachusetts and admitted *pro hac vice* in the United States District Court for the Eastern District of Arkansas, the issuing court of the underlying subpoena. I am an attorney of record for the Plaintiffs in the action the underlying subpoena seeks discovery in.

3. This Affidavit is submitted in support of Plaintiffs' Brief in Support of Motion to Compel Compliance with Subpoena, and in compliance with NECivR 7.1(a)(2)(C).

4. Exhibit 1 to Plaintiffs' Index of Evidence in Support of Plaintiffs' Brief in Support of Motion to Compel Compliance with Subpoena (the "Index") is a true and correct copy of Plaintiffs' February 9, 2018 subpoena on the Nebraska Department of Correctional Services (the "NDCS").

5. Exhibit 2 to Plaintiffs' Index of Evidence in Support of Plaintiffs' Brief in Support of Motion to Compel Compliance with Subpoena is a true and correct copy of the NDCS's February 23, 2018 Nonparty Objections to the Subpoenas to Produce Documents.

6. Exhibit 3 to Plaintiffs' Index of Evidence in Support of Plaintiffs' Brief in Support of Motion to Compel Compliance with Subpoena is a true and correct copy of a June 22, 2018 e-mail from Will Freeman to Dave Lopez.

7. Exhibit 4 to Plaintiffs' Index of Evidence in Support of Plaintiffs' Brief in Support of Motion to Compel Compliance with Subpoena is a true and correct copy of a July 2, 2018 email from Dave Lopez to Will Freeman.

8. Exhibit 5 to Plaintiffs' Index of Evidence in Support of Plaintiffs' Brief in Support of Motion to Compel Compliance with Subpoena is a true and correct copy of a November 9, 2017 press release from the NDCS, available at <https://corrections.nebraska.gov/ndcs-provides-notice-substances-be-employed-execution-lethal-injection>.

9. Exhibit 6 to Plaintiffs' Index of Evidence in Support of Plaintiffs' Brief in Support of Motion to Compel Compliance with Subpoena is a true and correct copy of a December 12, 2017 article posted on nbcnews.com, available at <https://www.nbcnews.com/storyline/lethal-injection/nevada-nebraska-executioners-are-turning-fentanyl-n828796>.

10. Exhibit 7 to Plaintiffs' Index of Evidence in Support of Plaintiffs' Brief in Support of Motion to Compel Compliance with Subpoena is a true and correct copy of a January 19, 2018 press release from the NDCS, available at <https://corrections.nebraska.gov/ndcs-provides-notice-substances-be-employed-execution-lethal-injection-0>.

11. Exhibit 8 to Plaintiffs' Index of Evidence in Support of Plaintiffs' Brief in Support of Motion to Compel Compliance with Subpoena is a true and correct copy of Jeffrey E. Stern,

*The Cruel and Unusual Execution of Clayton Lockett*, THE ATLANTIC (June 2015), available at <https://www.theatlantic.com/magazine/archive/2015/06/execution-clayton-lockett/392069/>.

12. Exhibit 9 to Plaintiffs' Index of Evidence in Support of Plaintiffs' Brief in Support of Motion to Compel Compliance with Subpoena is a true and correct copy of Bill Chappell, Arizona Execution of Inmate Takes Nearly 2 Hours, NPR: THE TWO-WAY (July 23, 2014), available at <https://www.npr.org/sections/thetwo-way/2014/07/23/334632862/arizona-execution-of-inmate-takes-nearly-two-hours>.

13. Exhibit 10 to Plaintiffs' Index of Evidence in Support of Plaintiffs' Brief in Support of Motion to Compel Compliance with Subpoena is a true and correct copy of The Associated Press, Witnessing Death: AP Reporters Describe Problem Executions, AP NEWS (Apr. 29, 2017), available at <https://www.apnews.com/bd583ccb99544d9cbe45a60f0afeed55>.

14. Exhibit 11 to Plaintiffs' Index of Evidence in Support of Plaintiffs' Brief in Support of Motion to Compel Compliance with Subpoena is a true and correct copy of the April 5, 2017 Protective Order entered in the underlying Arkansas matter 4:17-cv-00179-KGB (E.D. Ark.).

15. Exhibit 12 to Plaintiffs' Index of Evidence in Support of Plaintiffs' Brief in Support of Motion to Compel Compliance with Subpoena is a true and correct copy of Nebraska's public Execution Protocol.

16. On May 2, 2018, I participated in a meet and confer call with counsel for the NDCS, Dave Lopez and Ryan Post, regarding the subpoena served by Plaintiffs' on the NDCS (Exhibit 1). On that call, I offered to work with the NDCS to minimize the burden of complying with Plaintiffs' subpoena and to ensure adequate protection for any produced information. That offer included entering into a supplemental protective order in addition to the protective order already in place. Counsel for the NDCS indicated that, notwithstanding any narrowing or additional

protections, the NDCS was unlikely to agree to produce any information responsive to the subpoena. On June 22, 2018, I sent a follow-up e-mail to Mr. Lopez, offering to narrow the scope of Plaintiffs' subpoena to only two topics (Exhibit 3), and renewed Plaintiffs' offer to enter into a supplemental protective order. On June 29, 2018, having not heard from Mr. Lopez, I followed up with a second email. On July 2, 2018, Mr. Lopez responded that the NDCS does not intend to comply with the subpoena (Exhibit 4).

FURTHER AFFIANT SAYETH NOT.

DATED this 2<sup>nd</sup> day of July, 2018.

Kenton W. Freeman, Jr.  
Kenton W. Freeman, Jr.

SUBSCRIBED AND SWORN to before me this 2<sup>nd</sup> day of July, 2018.

[SEAL]

Karen A. LaVita  
Notary Public  
My Commission Expires: 10-15-2021

